

806 KAR 12:180. Military sales practices.

RELATES TO: KRS 304.1-040, 304.5-020, 304.5-030, 304.9-020(7), 304.12-010, 304.12-030, 304.15-310, 12 C.F.R. 205, 230, 707, 10 U.S.C. 992, 12 U.S.C. 4301, 26 U.S.C. 401(a), (k), 403(b), 408(k), (p), 414, 457, 501(c)(23), 29 U.S.C. 1001, 38 U.S.C. 1965, Pub.L. 109-290

STATUTORY AUTHORITY: KRS 304.2-110, 304.12-257, 10 U.S.C. 992(9)(a)(2)

NECESSITY, FUNCTION AND CONFORMITY: KRS 304.12-257 authorizes the executive director to promulgate administrative regulations to protect service members of the United States Armed Forces from dishonest insurance marketing and sales practices. EO 2008-507, effective June 16, 2008, reorganized the Office of Insurance as the Department of Insurance and established the Commissioner of Insurance, rather than executive director, as head of the department. 10 U.S.C. 992 sec 9(a)(2) requires the states to collectively work with the Secretary of Defense to ensure implementation of appropriate standards to protect members of the Armed Forces from dishonest and predatory insurance sales practices while on a military installation of the United States, and further requires each state to identify its role in promoting the standards in a uniform manner, not later than twelve (12) months after the date of enactment of the federal law. This administrative regulation sets forth standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive or unfair.

Section 1. Definitions. (1)(a) "Active duty" means full-time duty in the active military service of the United States and includes members of the reserve component, both the National Guard and Reserve, while serving under published orders for active duty or full-time training.

(b) "Active duty" does not include members of the reserve component who are performing active duty or active duty for training under military calls or orders specifying periods of less than thirty-one (31) calendar days.

(2) "Annuity" is defined in KRS 304.5-030.

(3) "Commissioner" means the Commissioner of the Department of Insurance.

(4) "Department of Defense Personnel" means all active duty service members and all civilian employees, including nonappropriated fund employees and special government employees, of the Department of Defense.

(5) "Door to door" means a solicitation or sales method in which an insurance producer proceeds randomly or selectively from household to household without a prior specific appointment.

(6) "General advertisement" means an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or the insurance producer.

(7) "Insurable needs" means the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate or survivors or dependents.

(8) "Insurer" is defined in KRS 304.1-040.

(9) "Insurance producer" is defined in KRS 304.9-020(7).

(10) "Known" or "knowingly" means the insurance producer or insurer had actual awareness, or in the exercise of ordinary care should have known, when the act or practice complained of occurred, that the person solicited is a service member.

(11) "Life insurance" is defined in 304.5-020.

(12) "Military installation" means any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including

barracks, transient housing, and family quarters.

(13) "MyPay" means the Defense Finance and Accounting Service Web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.

(14) "Other military survivor benefits" mean the death gratuity, funeral reimbursement, transition assistance, survivor and dependents' educational assistance, dependency and indemnity compensation, TRICARE healthcare benefits, survivor housing benefits and allowances, federal income tax forgiveness, and Social Security survivor benefits.

(15) "SGLI" means the Servicemembers' Group Life Insurance as authorized by 38 U.S.C. section 1965.

(16) "Service member" means an active duty officer, both commissioned and warrant, or enlisted member of the United States Armed Forces.

(17)(a) "Side fund" means a fund or reserve that is part of or otherwise attached to a life insurance policy by rider, endorsement, or other mechanism which accumulates premium or deposits with interest or by other means.

(b) "Side fund" does not mean:

1. Accumulated value or cash value or secondary guarantees provided by a universal life policy;

2. Cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; or

3. A premium deposit fund which:

a. Contains only premiums paid in advance which accumulate at interest;

b. Imposes no penalty for withdrawal;

c. Does not permit funding beyond future required premiums;

d. Is not marketed or intended as an investment; and

e. Does not carry a commission, either paid or calculated.

(18) "Specific appointment" means a prearranged appointment agreed upon by both parties and definite as to place and time.

(19) "United States Armed Forces" means all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(20) "VGLI" means the Veterans' Group Life Insurance, as authorized by 38 U.S.C. section 1965.

Section 2. Scope. This administration regulation shall apply only to the solicitation or sale of a life insurance policy or annuity by an insurer or insurance producer to an active duty service member of the United States Armed Forces.

Section 3. Exemptions. (1) This administrative regulation shall not apply to solicitations or sales involving:

(a) Credit insurance;

(b) Group life insurance or group annuities if

1. An in-person, face-to-face solicitation of individuals by an insurance producer is not made; or

2. The contract or certificate does not include a side fund;

(c) An application to the existing insurer that issued the existing policy or contract if:

1. A contractual change or a conversion privilege is being exercised;

2. The existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner; or

3. A term conversion privilege is exercised among corporate affiliates;

- (d) Individual stand-alone health policies, including disability income policies;
- (e) Contracts offered by SGLI or VGLI;
- (f) Life insurance contracts offered through or by a non-profit military association, qualifying under 26 U.S.C. 501(c) (23), and which are not underwritten by an insurer; or
- (g) Contracts used to fund:
 - 1. An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act, 29 U.S.C. 1001;
 - 2. A plan described by 26 U.S.C. 401(a), 401(k), 403(b), 26 U.S. C. 408(k) or 408(p), as amended, if established or maintained by an employer;
 - 3. A government or church plan defined in 26 U.S.C. 414;
 - 4. A government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under 26 U.S.C. 457;
 - 5. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
 - 6. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution or process; or
 - 7. Prearranged funeral contracts.
- (2) This administrative regulation shall not be construed to abrogate the ability of a nonprofit organization or another organization to educate members of the United States Armed Forces in accordance with Department of Defense Instruction 1344.07, "Personal Commercial Solicitation on DoD Installations."
- (3)(a) General advertisements, direct mail, and internet marketing shall not constitute solicitation.
- (b) Telephone marketing shall not constitute solicitation if the caller:
 - 1. Explicitly and conspicuously discloses that the product concerned is life insurance; and
 - 2. Does not make a statement that avoids a clear and unequivocal statement that life insurance is the subject matter of the solicitation.
- (c) This subsection shall not be construed to exempt an insurer or insurance producer from the requirements of this administrative regulation in any in-person, face-to-face meeting established as a result of the exemptions identified in this subsection.

Section 4. Practices Declared False, Misleading, Deceptive or Unfair on a Military Installation. (1) The following acts or practices, if committed on a military installation by an insurer or insurance producer, with respect to the in-person, face-to-face solicitation of life insurance shall be false, misleading, deceptive or unfair:

- (a) Knowingly soliciting the purchase of any life insurance product:
 - 1. Door to door; or
 - 2. Without first establishing a specific appointment for each meeting with the prospective purchaser;
- (b) Soliciting service members in a group or mass audience or in a captive audience where attendance is not voluntary;
- (c) Knowingly making appointments with or soliciting service members during their normally scheduled duty hours;
- (d) Making appointments with or soliciting service members in
 - 1. Barracks;
 - 2. Day rooms;
 - 3. Unit areas;
 - 4. Transient personnel housing; or
 - 5. Other areas where the installation commander has prohibited solicitation;

(e) Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee;

(f) Posting unauthorized bulletins, notices, or advertisements;

(g) Failing to present Department of Defense Form 2885, "Personal Commercial Solicitation Evaluation," to service members solicited or encouraging service members solicited not to complete or submit a Department of Defense Form 2885; or

(h) Knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States Armed Forces without first obtaining for the insurer's files a completed copy of a required form which confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives or rules of the Department of Defense or any branch of the Armed Forces.

(2) The following acts or practices if committed on a military installation by an insurer or insurance producer constitute corrupt practices, improper influences, or inducements and shall be false, misleading, deceptive, or unfair:

(a) Using Department of Defense personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members; and

(b) Using an insurance producer to participate in any United States Armed Forces sponsored education or orientation program.

Section 7. Practices Declared False, Misleading, Deceptive, or Unfair Regardless of Location.

(1) The following acts or practices by an insurer or insurance producer constitute corrupt practices, improper influences, or inducements and shall be false, misleading, deceptive, or unfair:

(a)1. Submitting, processing, or assisting in the submission or processing of any allotment form or similar device used by the United States Armed Forces to direct a service member's pay to a third party for the purchase of life insurance including using or assisting in using a service member's "MyPay" account or other similar internet or electronic medium for those purposes;

2. This subsection does not prohibit assisting a service member by providing insurer or premium information necessary to complete an allotment form;

(b)1. Knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member does not have a formal banking relationship;

2. For purposes of this section, a formal banking relationship is established if the depository institution:

a. Provides the service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C. 4301 and 12 C.F.R. 205, 230, and 707; and

b. Permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums;

(c) Employing a device or method or entering into an agreement if funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's leave and earnings statement or equivalent or successor form as "savings" or "checking" and where the service member has no formal banking relationship;

(d) Entering into any agreement with a depository institution for the purpose of receiving funds from a service member if the depository institution, with or without compensation, agrees

to accept direct deposits from a service member with whom it has no formal banking relationship;

(e) Using Department of Defense personnel, directly or indirectly, as a representative or agent in an official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to the family members of such personnel;

(f) Offering or giving anything of value, directly or indirectly, to Department of Defense personnel to procure their assistance in encouraging, assisting, or facilitating the solicitation or sale of life insurance to another service member;

(g) Knowingly offering or giving anything of value to a service member for the member's attendance at any event where an application for life insurance is solicited; or

(h) Advising a service member to change the member's income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

(2) The following acts or practices by an insurer or insurance producer lead to confusion regarding source, sponsorship, approval, or affiliation and shall be false, misleading, deceptive, or unfair:

(a)1. Making any representation, or using any device, title, descriptive name or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer, or product offered is affiliated, connected or associated with, endorsed, sponsored, sanctioned, or recommended by the U.S. Government, the United States Armed Forces, or any state or federal agency or government entity;

2. This section shall not be construed to prohibit a person from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning; or

(b) Soliciting the purchase of any life insurance product through the use of or in conjunction with a third party organization that promotes the welfare of or assists members of the United States Armed Forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance producer, or insurance product is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government or the United States Armed Forces.

(3) The following acts or practices by an insurer or insurance producer lead to confusion regarding premiums, costs, or investment returns and shall be false, misleading, deceptive, or unfair:

(a) Using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid; or

(b) Excluding individually issued annuities, misrepresenting the mortality costs of a life insurance product, including stating or implying that the product "costs nothing" or is "free."

(4) The following acts or practices by an insurer or insurance producer regarding SGLI or VGLI shall be false, misleading, deceptive, or unfair:

(a) Making any representation regarding the availability, suitability, amount, cost, exclusions or limitations to coverage provided to a service member or dependents by SGLI or VGLI, which is false, misleading, or deceptive;

(b) Making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI to private insurers which is false, misleading, or deceptive; or

(c) Suggesting, recommending, or encouraging a service member to cancel or terminate his or her SGLI policy or issuing a life insurance policy which replaces an existing SGLI policy unless the replacement shall take effect upon or after the service member's separation from the

United States Armed Forces.

(5) The following acts or practices by an insurer or insurance producer regarding disclosure shall be false, misleading, deceptive, or unfair:

(a) Deploying, using, or contracting for a lead generating material designed exclusively for use with service members that does not clearly and conspicuously disclose that the recipient will be contacted by an insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance;

(b) Failing to disclose that a solicitation for the sale of life insurance will be made if establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser;

(c) Excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance;

(d) Failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by Section 10 of the "Military Personnel Financial Services Protection Act," Pub. L. No. 109-290, p.16; or

(e) Excluding individually issued annuities, if the sale is conducted in-person face-to-face with an individual known to be a service member, failing to provide the applicant if the application is taken:

1. An explanation of a free look period with instructions on how to cancel if a policy is issued; and

2.a. A copy of the application; or

b.(i) A written disclosure.

(ii) The copy of the application or the written disclosure shall set out the type of life insurance and the death benefit applied for and its expected first year cost. A basic illustration that meets the requirements of 806 KAR 12:140 shall be sufficient to meet this requirement for a written disclosure.

(6) The following acts or practices by an insurer or insurance producer with respect to the sale of certain life insurance products shall be false, misleading, deceptive, or unfair:

(a) Excluding individually issued annuities, recommending the purchase of any life insurance product which includes a side fund to a service member unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable;

(b) Offering for sale or selling a life insurance product which includes a side fund to a service member who is:

1. Currently enrolled in SGLI; and

2. Presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance;

(c) Excluding individually issued annuities, offering for sale or selling a life insurance contract that includes a side fund:

1. Unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;

2. Unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product.

a. The effective rate of return shall consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage.

b. The schedule shall be provided for at least each policy year from one (1) to ten (10) and for every subsequent fifth policy year ending at age 100, policy maturity, or final expiration; and

3. That by default diverts or transfers funds accumulated in the side fund to pay, reduce, or offset any premiums due; or

(d) Excluding individually issued annuities, offering for sale or selling a life insurance contract that after considering all policy benefits, does not comply with KRS 304.15-310.

Section 8. Incorporation by Reference. The following material is incorporated by reference:

(a) "Department of Defense Instruction Number 1344.07, Personal Commercial Solicitation on DoD Installations", (March 30, 2006); and

(b) "Department of Defense Form 2885, Personal Commercial Solicitation Evaluation", (April 2006).

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